

Remarks

This Application has been carefully reviewed in light of the Final Office Action mailed December 20, 2007. Although Applicant believes all claims are allowable without amendment, to advance prosecution Applicant has made clarifying amendments to Claims 1, 13, and 15. At least certain of these amendments are not considered narrowing, and none is considered necessary for patentability. Applicant respectfully requests reconsideration and allowance of all pending claims.

I. Claim 13 Recites Patentable Subject Matter

The Examiner rejects Claim 13 under 35 U.S.C. § 101 as being directed to non-patentable subject matter. Although Applicant believes Claim 13 is directed to patentable subject matter without amendment, to advance prosecution Applicant has made clarifying amendments to Claim 13. Claim 13 now recites that the system comprises one or more memory units and one or more processing units, and that one or more processing units are operable to perform certain limitations recited in the claim. For at least these reasons, Applicant respectfully submits that Claim 13 is directed to patentable subject matter and requests reconsideration and allowance of Claim 13.

II. The Claims are Allowable over the Cited Combinations of References

A. Independent Claims 1, 13, and 15 and Their Dependent Claims are Allowable over the Proposed *Ward-Lewis-Lohmann* Combination

The Examiner rejects Claims 1, 4, 13, 15, and 20 under 35 U.S.C. § 103(a) as being unpatentable over a proposed combination of U.S. Patent 5,367,670 to Ward et al. ("*Ward*"), U.S. Patent 6,603,396 to Lewis, et al. ("*Lewis*"), and U.S. Patent 5,745,692 to Lohmann II et al. ("*Lohmann*"). Applicant respectfully traverses these rejections and discusses independent Claim 1 as an example.

1. The Proposed *Ward-Lewis-Lohmann* Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Claim 1

"To establish *prima facie* obviousness of a claimed invention, *all the claim limitations* must be taught or suggested by the prior art." M.P.E.P. § 2143.03 (emphasis

added); *see also In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). “*All words* in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. 2143.03 (emphasis added); *see also In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

At a minimum, it does not appear that the cited portions of the proposed *Ward-Lewis-Lohmann* combination disclose, teach, or suggest the following limitations recited in Claim 1:

- detecting an alert condition identifying a problem with a system component, the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous subsystems each performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other subsystems;
- filtering the [detected] alert condition [identifying a problem with a system component] to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository; and
- outputting the audio notification message via the notification path.

For example, the cited portion of the proposed *Ward-Lewis-Lohmann* combination does not disclose, teach, or suggest “filtering the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition,” as recited in Claim 1. As allegedly disclosing “determin[ing] a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition,” the Examiner relies on *Ward*, citing Col. 5, ll. 21-27. (Final Office Action at 3) The cited portion of *Ward* discloses the following:

As may be seen in FIG. 2, the path by which data accumulated during the monitoring of system components and parameters indicative of an actual or potential failure may be any one of four paths, depending on the particular type of actual or potential failure being monitored. Each system component being monitored may be referred to as an object having a number of attributes.

(*Ward*, Col. 5, ll. 21-27)

However, nowhere does this cited portion disclose, teach, or suggest any determination of a notification path associated with an alert condition, let alone “filtering the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition,” as recited in Claim 1. Instead, the mention of “paths” in the cited portion of *Ward* relates to “the path by which data accumulated during the monitoring of system components and parameters indicative of an actual or potential failure may be any one of four paths, depending on the particular type of actual or potential failure being monitored.” The path disclosed in *Ward* does not relate to any “notification path,” as recited in Claim 1.

Additionally, it does not appear that the cited portions of either *Ward* or *Lewis* disclose, teach, or suggest “filtering the alert condition to determine a notification path associated with the alert condition, ***the notification path being determined based at least on a property of an object associated with the alert condition,***” as recited in Claim 1.

In response to the above arguments, the Examiner again points to column 5, lines 21-27 of *Ward*, referencing in particular the four paths that are mentioned in this cited portion. (Final Office Action at 17) However, it appears to Applicant that the four paths disclosed in the cited portion are the four paths internal to system manager 22, not any notification paths. The cited portion states, “As may be seen in FIG. 2, the path by which data [is] accumulated during the monitoring of system components and parameters indicative of an actual or potential failure may be any one of four paths, depending on the particular type of actual or potential failure being monitored.” (*Ward* at 5:21-27) The data is accumulated on the four paths internal to the system manager 22 of FIG. 2.

The Examiner also refers to various portions in column 7 of *Ward*. (Final Office Action at 17-18) These cited portions simply disclose “in-band” and “out-of-band” alerts,” and that an in-band alert may be communicated to the network operating system or the local system manager console and an out-of-band alert may be communicated to communication elements 54 where an alert is issued. (*See Ward* at 7:25-57) However, nowhere do the cited portions disclose, teach, or suggest “determin[ing] a notification path associated with the alert

condition, *the notification path being determined based at least on a property of an object associated with the alert condition,*” as recited in Claim 1.

As another example, at least because the proposed *Ward-Lewis-Lohmann* combination fails to disclose, teach, or suggest “filtering the [detected] alert condition [identifying a problem with a system component] to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository,” as recited in Claim 1, the proposed combination necessarily fails to disclose, teach, or suggest “outputting the audio notification message *via the notification path,*” as recited in Claim 1.

As another example, it does not appear that the cited portions of the proposed *Ward-Lewis-Lohmann* combination disclose, teach, or suggest “detecting an alert condition identifying a problem with a system component, *the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous subsystems each performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other subsystems,*” as recited in Claim 1 as amended.

For at least these reasons, the proposed *Ward-Lewis-Lohmann* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claim 1. For at least certain analogous reasons, the proposed *Ward-Lewis-Lohmann* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claims 13 and 15. Independent Claims 1, 13, and 15 and their dependent claims are allowable for at least this reason.

2. The Proposed *Ward-Lewis-Lohmann* Combination is Improper

Applicant respectfully submits that the Examiner has not provided an adequate reason, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant’s invention to modify or combine *Ward*,

Lewis, and *Lohmann* in the manner the Examiner proposes. Applicant's claims are allowable for at least this additional reason.

With respect to the proposed combination of *Lewis* with *Ward*, the Examiner states:

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of *Ward* and *Lewis* because *Lewis*'s teaching would allow *Ward*'s system to filter irrelevant alarms in order to maximize performance and reliability of the system (col. 7, lines 59-65).

(Final Office Action at 3-4)

It appears that the Examiner has merely proposed an alleged advantage of combining *Ward* with *Lewis* (an advantage which Applicant does not admit could even be achieved by combining these references in the manner the Examiner proposes). However, the alleged advantage of the system disclosed in *Lewis* does not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention (*without using Applicant's disclosure or claims as a guide*) to modify the particular techniques disclosed in *Ward* with the cited disclosure in *Lewis*; and (2) how one of ordinary skill in the art at the time of Applicant's invention would have actually done so. Indeed, if it were sufficient for an Examiner to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine or modify that reference with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear that is not the law.

Moreover, Applicant maintains that it is entirely unclear and unexplained how the purported advantage even relates to the teachings that the Examiner is combining. For example, even assuming for the sake of argument only that *Lewis* discloses "filtering an alert condition to determine a notification path associated with the alert condition," as argued by the Examiner, it is entirely unclear why the alleged motivation of "maximizing performance and reliability of the system" would lead one of ordinary skill in the art at the time of

Applicant's invention to incorporate the teaching of "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught in *Lewis*, into the system of *Ward*. In other words, it is not clear how the alleged advantage of "maximizing performance and reliability of the system" would even be achieved by modifying the system of *Ward* to include "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught by *Lewis*.

Respectfully, the Examiner's attempt to combine *Lewis* with *Ward* appears to constitute the type of impermissible hindsight reconstruction of Applicant's claims, using Applicant's claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

In response to the above argument, the Examiner states, "Specifically, Lewis' teaching of filtering out and discarding irrelevant alarms would the performance and reliability of only relevant alarms being passed." (Final Office Action at 18-19) It is not clear to Applicant how this statement even relates the manner in which the Examiner is attempting to combine these references or to Applicant's claims. In the rejection, the Examiner appears to be using *Lewis* as allegedly disclosing "filtering the alert condition to determine a notification path," as recited in Claim 1. It is not clear to Applicant how "filtering out and discarding irrelevant alarms" to purportedly achieve some improved performance and reliability has anything to do with the particular teachings the Examiner is trying to combine with *Ward*.

Accordingly, since the Examiner has not demonstrated an adequate reason to combine *Ward* and *Lewis* in the manner the Examiner proposes, Applicant respectfully submits that the Examiner's conclusions set forth in the Office Action do not meet the requirements for demonstrating a *prima facie* case of obviousness. For at least these reasons, Applicant respectfully submits that the proposed *Ward-Lewis-Lohmann* combination is improper. Independent Claims 1, 13, and 15 and their dependent claims are allowable for at least this additional reason.

B. The Separately-Rejected Dependent Claims are Allowable

The Examiner rejects Claims 9, 17, and 21-22 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, and Lohmann* in view of U.S. Patent 6,021,262 to Cote, et al. (“Cote”). The Examiner rejects Claims 5-6 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, and Lohmann* in view of U.S. Patent 4,881,197 to Fischer (“Fischer”). The Examiner rejects Claim 3 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, and Lohmann* in view of U.S. Patent 6,037,099 to Sabourin, et al. (“Sabourin”). The Examiner rejects Claim 8 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, and Lohmann* in view of U.S. Patent 6,421,707 to Miller, et al. (“Miller”). The Examiner rejects Claim 11 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, and Lohmann* in view of U.S. Patent 6,161,082 to Goldberg, et al. (“Goldberg”). The Examiner rejects Claim 7 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, Lohmann, and Fischer* in view of “Official Notice.” The Examiner rejects Claim 10 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, Lohmann, and Cote* in view of U.S. Patent Publication No. 2001/0044840 filed by Carleton (“Carleton”). The Examiner rejects Claims 18-19 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, Lohmann, and Cote* in view of U.S. Patent Publication No. 2004/0210469 filed by Jones, et al. (“Jones”). The Examiner rejects Claim 23-24 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, Lohmann, and Cote* in view of U.S. Patent 6,185,613 to Lawson, et al. (“Lawson”).

Claims 3, 5-9, 10-11, 17-19, and 21-24 depend from independent Claim 1, which Applicant has shown above to be allowable over the proposed *Ward-Lewis-Lohmann* combination, and are allowable for at least this reason. In addition, Claims 3, 5-9, 10-11, 17-19, and 21-24 recite further patentable distinctions over the various proposed combinations of references.

For example, the cited portions of the proposed *Ward-Lewis-Lohmann-Sabourin* combination (which the Examiner applies against Claim 3) do not appear to disclose, teach, or suggest at least the following limitations recited in Claim 3: wherein constructing an audio notification message includes identifying a portion of the message that is likely to be difficult

for a user to understand and replacing the identified portion with a more easily understood synonym.

The Examiner appears to acknowledge that *Ward*, *Lewis*, and *Lohmann* fail to disclose these limitations. However, the Examiner argues that *Sabourin* teaches these limitations. (Final Office Action at 9-10) In particular, the Examiner cites column 10, line 60 through column 11, line 8 of *Sabourin* as allegedly teaching the limitations of Claim 3. The cited portion of *Sabourin* relates to computer recognition of human speech and an associated confusability tool that appears to be the subject of the alleged invention in *Sabourin*. The cited portion discloses that there is some flexibility in the selection of the lexicon the computer is trained to recognize. According to *Sabourin*, the confusability tool may be used to automatically find word pairings that tend to cause high confusability, and a designer can replace the relevant orthographies with alternate synonyms. *Sabourin* further discloses that the simplification of a lexicon by replacing confusable words with non-confusable synonyms can be useful by facilitating understanding across a communication medium and for creating a confusable test lexicon to rigorously test a speech recongizer.

However, nowhere does the cited portion disclose, teach, or suggest constructing an audio notification message by identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym, as recited in Claim 3. The cited portions of *Sabourin* relate to computer recognition of human speech; they do not disclose, teach, or suggest constructing an audio notification message by identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of dependent Claim 3.

As another example, the cited portions of the proposed *Ward-Lewis-Lohmann-Cote-Jones* combination (which the Examiner applies against Claim 19) do not appear to disclose, teach, or suggest at least the following limitations recited in Claim 19:

- the notification path comprises a multi-tiered notification path, each tier of the multi-tiered notification path identifying one or more users assigned a level of responsibility with respect to the alert condition; and
- the method further comprises assigning the level of responsibility to each of the one or more users ***based upon a type of object associated with the alert condition.***

As allegedly disclosing the second limitation, the Examiner cites *Jones*, stating that *Jones* “teaches assigning the level of responsibility to each of the one or more users based upon the severity of the alert condition (i.e., type of object associated with the alert condition).” (Final Office Action at 20) Applicant respectfully submits that the severity of the alert condition cannot be equated with the “type of object associated with the alert condition,” as it is recited in Claim 19. As purportedly disclosing the “object” recited in Applicant’s claims, the Examiner relies on the objects disclosed in *Ward*, which appear to represent system components. Now, in rejecting Claim 19, the Examiner improperly modifies what is being mapped to the claimed “object.” Respectfully, this type of inconsistency is no doubt the result of attempting to combine disjointed portions of too many references in an attempt to recreate Applicant’s claims through hindsight. The cited portion of *Jones* does not disclose, teach, or suggest “assigning the level of responsibility to each of the one or more users ***based upon a type of object associated with the alert condition,***” as recited in Claim 19.

Applicant reiterates that “[t]o establish *prima facie* obviousness of a claimed invention, ***all the claim limitations*** must be taught or suggested by the prior art.” M.P.E.P. § 2143.03 (emphasis added). “***All words*** in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. 2143.03 (emphasis added). It does not appear to Applicant that the cited portions of the proposed *Ward-Lewis-Lohmann-Cote-Jones* discloses, teaches, or suggests, at a minimum, “assigning the level of responsibility to each of the one or more users based upon a type of object associated with the alert condition,” as recited in Claim 19.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of dependent Claim 19.

To avoid burdening the record and in view of the clear allowability of independent Claim 1, Applicant does not specifically discuss in this Response the distinctions recited in other dependent claims. However, Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Furthermore, Applicant does not admit that the various combinations of references proposed by the Examiner are possible or that the Examiner has demonstrated the requisite teaching, suggestion, or motivation in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to combine or modify the various references in the manner proposed by the Examiner.

For at least these reasons, Applicant respectfully requests reconsideration and an allowance of dependent Claims 3, 5-9, 10-11, 17-19, and 21-24.

III. No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the reference cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.

Conclusion

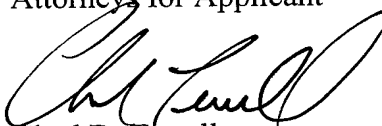
Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicant, at the Examiner's convenience at (214) 953-6813.

Although Applicant believes no fees are due, the Commissioner is hereby authorized to charge any necessary additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: March 20, 2008

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